



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
Phone 800-227-8917
<http://www.epa.gov/region08>

June 2, 2004

Ref: 8ENF-L

SENT VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

David Galt, Director
Montana Department of Transportation
P.O. Box 201001
2701 Prospect Avenue
Helena, MT 59620-1001

Re: In the Matter of MDT, Glasgow Maintenance Station
Docket No. **CWA-08-2004-0045**
Administrative Complaint and Notice of Opportunity
for Hearing

Dear Mr. Galt:

Enclosed is an Administrative Complaint and Notice of Opportunity for Hearing ("Complaint") filed by the U.S. Environmental Protection Agency ("EPA") against the Montana Department of Transportation ("MDT"), pursuant to its authority under section 311(b)(6)(B)(i) of the Clean Water Act (the "Act"), 33 U.S.C. § 1321(b)(6)(B)(i). EPA alleges in the Complaint that MDT's Glasgow Maintenance Station facility ("facility") located at RR 1-4778, Glasgow, Montana, is in violation of the oil pollution prevention requirements set forth at 40 C.F.R. part 112 and section 311(b)(6)(A) of the Act, 33 U.S.C. § 1321(b)(6)(A).

Specifically, the Complaint alleges that MDT failed to prepare and implement a Spill Prevention, Control and Countermeasure ("SPCC") plan for its facility in writing and in accordance with 40 C.F.R. §§ 112.7 and 112.8 as required by 40 C.F.R. § 112.3. EPA discovered the violations during an SPCC inspection of the facility on September 22, 2003. The Complaint proposes a penalty of \$27,500 for the alleged violations.

MDT has the right to a hearing to contest the factual allegations in the Complaint. If MDT admits the allegations, or the allegations are found to be true after you have had an opportunity for a hearing, you have the right to contest the penalty proposed in the Complaint. A copy of EPA's administrative procedures is enclosed for your review. Please note the



requirements for an answer set forth in 40 C.F.R. §§ 22.15 and 22.38. If you wish to contest the allegations in the Complaint or the penalty proposed in the Complaint, you must file a written answer within thirty (30) days of receipt of the enclosed Complaint with the EPA Regional Hearing Clerk at the following address:

Ms. Tina Artemis, Regional Hearing Clerk (8RC)
U.S. EPA, Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

If you do not file an answer by the applicable deadline, you will have defaulted and each allegation in the Complaint will be deemed to be admitted as true. You will have waived your right to appear in this action for any purpose and will also have waived your right to be notified of any Agency proceedings that occur before a civil penalty may be imposed. Provided that the Complaint is legally sufficient, EPA may file a motion for default for the amount proposed in the Complaint.

Whether or not you request a hearing, you may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty. You have the right to be represented by an attorney at any stage of the proceedings, including any informal discussions with EPA, but it is not required. A request for an informal conference does not extend the thirty (30) day period for filing your answer and/or requesting a hearing.

If you have any questions, the most knowledgeable people on my staff regarding this matter are Amy Swanson and Jane Nakad. Ms. Swanson is in our Legal Enforcement Program and can be reached at (303) 312-6906. Ms. Nakad is in our Technical Enforcement Program and can be reached at (303) 312- 6202.

We urge your prompt attention to this matter.

Sincerely,

SIGNED

Elisabeth Evans
Technical Enforcement Director
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures: Complaint and Notice of Opportunity for Hearing

Consolidated Rules of Practice, 40 C.F.R. Part 22
SBREFA Information Sheet
Notice of SEC Disclosure

cc: Stan Sternberg, MDT Environmental Program Supervisor
Jean Riley, MDT Environmental Services Acting Bureau Chief
Doug Compton, MDT Environmental Services P.E.
Larry Murolo, MDT Facility Manager
Tim Reardon, MDT Legal Counsel

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

| | | |
|--------------------------------------|---|--|
| IN THE MATTER OF: |) | Docket No. CWA-08-2004-0045 |
| |) | |
| Montana Department of Transportation |) | |
| P.O. Box 201001 |) | ADMINISTRATIVE COMPLAINT AND |
| 2701 Prospect Avenue |) | OPPORTUNITY TO REQUEST HEARING |
| Helena, MT 59620-1001 |) | |
| |) | Proceeding to Assess Class I Civil Penalty |
| (Glasgow Maintenance Station |) | Under Section 311 of the Clean Water Act |
| RR 1-4778 |) | |
| Glasgow, MT 59417), |) | |
| |) | |
| Respondent. |) | |

AUTHORITY

1. This is a civil administrative action issued under the authority vested in the Administrator of the Environmental Protection Agency ("EPA") by section 311(b)(6)(B)(i) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Oil Pollution Act of 1990. The Administrator has properly delegated this authority to the undersigned EPA officials. This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules") set forth at 40 C.F.R. part 22, a copy of which is enclosed.

GENERAL ALLEGATIONS

2. Respondent Montana Department of Transportation ("MDT") is a department of the State of Montana.

3. Respondent is a "person" within the meaning of sections 311(a)(7) and 502(5) of

the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5).

4. Respondent owns and operates the Glasgow Maintenance Station facility (“facility”) located on RR 1-4778 in Glasgow, Montana. The facility is a state highway maintenance office and equipment yard that stores road oil and diesel fuel for vehicles. The facility includes, but is not limited to, one 6,000 gallon-capacity road oil tank, one 12,000 gallon-capacity road oil tank, and one diesel fuel tank with a capacity of 1,500 gallons.

5. Diesel fuel and road oil are oils within the meaning of “oil” as defined at section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1).

6. Respondent stores, transfers, distributes, uses or consumes oil or oil products at the facility.

7. Respondent is an "owner and operator" of an "onshore facility" within the meaning of sections 311(a)(6) and (10) of the Act, 33 U.S.C. §§ 1321(a)(6) and (10).

8. The facility is a “non-transportation related” “onshore facility” within the meaning of 40 C.F.R. § 112.2.

9. The facility has a total above-ground oil storage capacity greater than 1,320 gallons.

10. The facility is located approximately 1,500 feet east of Cherry Creek, an intermittent stream that flows into the Milk River approximately one and one-half miles to the south.

11. Cherry Creek is a “navigable water” and “waters of the United States” within the meaning of section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1.

12. Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), provides that the

President shall issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from vessels and from onshore and offshore facilities, and to contain such discharges"

13. EPA promulgated the oil pollution prevention regulations, set forth at 40 C.F.R. part 112. 40 C.F.R. § 112.1(b) states that the requirements of part 112 apply:

to owners or operators of non-transportation related onshore and offshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil or oil products, and which, due to their location, could reasonably be expected to discharge oil in harmful quantities, as defined in part 110 of this chapter, into or upon the navigable waters of the United States or adjoining shorelines..."

14. The facility is a non-transportation onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States (as defined by section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1) or its adjoining shoreline that may either (1) violate applicable water quality standards or (2) cause a film or sheen or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

15. The facility is subject to the oil pollution prevention requirements of 40 C.F.R. part 112, pursuant to section 311(j) of the Act, 33 U.S.C. § 1321(j), and its implementing regulations.

16. 40 C.F.R. § 112.3 requires that owners or operators of onshore and offshore facilities prepare in writing and implement a Spill Prevention, Control, and Countermeasure ("SPCC") plan in accordance with applicable sections of part 112 including, but not limited to,

sections 112.7 and 112.8.

17. Section 311(b)(6)(A) of the Act, 33 U.S.C. § 1321(b)(6)(A), states in pertinent part that any owner, operator, or person in charge of any vessel, onshore facility or offshore facility (ii) who fails or refuses to comply with any regulation issued under subsection (j) of this section to which that owner, operator, or person in charge is subject, may be assessed a class I or class II civil penalty by ... the Administrator.

18. On or about September 22, 2003, an authorized EPA inspector entered the facility with the consent and participation of a facility representative to inspect it for compliance with the CWA and SPCC regulations.

19. At the time of the inspection, the facility had a total oil storage capacity of approximately 19,500 gallons.

20. The facility did not have a written SPCC plan at the time of the inspection.

21. The following SPCC implementation measures were found to be deficient at the time of the inspection:

- a. inspections not performed according to written procedures. No documentation of inspections maintained;
- b. no secondary containment for the tank truck loading/unloading areas;
- c. inadequate and/or ineffective secondary containment for the 12,000-gallon road oil tank due to crack in containment wall;
- d. no secondary containment for the 1,500 gallon vaulted diesel tank and the tank does not meet the requirements for a self-contained tank;
- e. no program for integrity testing for containers; nor formal program of

visual inspections; nor records of tests or inspections;

- f. master flow valve on the 12,000 gallon road oil tank is not secured in the closed position when facility is in non-operating or standby status;
- g. power switch or starter control for the diesel tank is left on and unsecured when the facility is unoccupied;
- h. no tank level gauges for determining the liquid level existed for the 6,000 and 12,000-gallon road oil tanks;
- i. no person at the facility designated as responsible for discharge prevention;
- j. oil-handling personnel not trained or briefed in accordance with the regulations; and
- k. no SPCC training of facility personnel.

22. Respondent prepared a facility SPCC plan in January 2004.

23. Respondent failed to prepare prior to January 2004, and implement to date, an SPCC plan in writing and in accordance with the regulations at 40 C.F.R. §§ 112.7 and 112.8 as required by 40 C.F.R. § 112.3.

23. Respondent's failure to prepare and implement an SPCC plan for the facility in writing and in accordance with the regulations at 40 C.F.R. §§ 112.7 and 112.8 constitutes a violation of 40 C.F.R. § 112.3 and section 311(j)(1)(C), 33 U.S.C. § 1321(j)(1)(C).

PROPOSED CIVIL PENALTY

25. Based on the foregoing Allegations and pursuant to the authority of section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), and 40 C.F.R. § 19.4, Complainant

proposes the assessment of administrative penalties against the Respondent in the amount of **\$27,500**. Complainant proposes this penalty amount after considering the applicable statutory penalty factors in section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8): the seriousness of the violation, the economic benefit to the violator, if any, resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other matters as justice may require.

26. The Respondent's noncompliance is deemed to be major as the violations undermine the Respondent's ability to prevent discharges of oil from impacting waters of the United States. At the time of inspection, the facility did not have an SPCC Plan and had approximately eleven SPCC implementation deficiencies based on the inspection and subsequent SPCC plan review, including inadequate secondary containment for the 12,000 gallon road oil tank, no secondary containment for the 1,500 gallon vaulted diesel tank, and no secondary containment for the tank truck loading/unloading areas. The potential environmental impact from a discharge would be moderate as drainage from the facility would flow approximately 1,500 feet west into Cherry Creek, an intermittent stream that flows into the Milk River approximately one and one-half miles south of the facility. The Respondent did not qualify for any penalty reduction based on mitigation factors. No additions were made to the proposed penalty amount based on either a history of violations or economic benefit.

TERMS OF PAYMENT FOR QUICK RESOLUTION

27. If Respondent does not contest the findings and penalty proposal set out above,

this action may be resolved by paying the proposed penalty in full pursuant to 40 CFR § 22.18. If such payment is made within 30 calendar days of receipt of this Complaint, no answer need be filed. For more time for payment, Respondent may file a statement agreeing to pay the penalty within 30 days of receipt of the Complaint, then pay the money within 60 days of such receipt. Payment is to be made by sending a cashier's or certified check payable to "Oil Spill Liability Trust Fund," with the docket number and name of the facility written on the check, to:

Jane Nakad
Technical Enforcement Program (8ENF-UFO)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

Payment of the penalty in this manner does not relieve Respondent of its obligation to comply with the requirements of the statute and regulations. Payment of the penalty in this manner shall constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing on this matter.

OPPORTUNITY TO REQUEST A HEARING

28. As provided in the Act, a Respondent has the right to a public hearing to contest this Complaint. If you (1) contest the factual claims made in this Complaint; (2) contest the appropriateness of the proposed penalty; and/or (3) assert that you are entitled to judgment as a matter of law, you must file a written answer in accordance with section 22.15 and 22.38 of the Consolidated Rules within 30 calendar days after receipt of this Complaint. Your answer must (1) clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with regard to which you have knowledge; (2) state circumstances or arguments which are alleged to constitute grounds for defense; (3) state the facts you dispute; (4) the basis

for opposing the proposed relief; and (5) specifically request an administrative hearing, if desired. Failure to admit, deny, or explain any material factual allegation in this Complaint will constitute an admission of the allegation.

The answer and one copy must be sent to:

Tina Artemis, Regional Hearing Clerk (8RC)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466

and a copy must be sent to the following attorney:

Amy Swanson, Enforcement Attorney (8ENF-L)
U.S. EPA Region 8, Legal Enforcement Program
999 18th Street, Suite 300
Denver, CO 80202-2466
Telephone: (303) 312-6906

IF YOU FAIL TO REQUEST A HEARING, YOU WILL WAIVE YOUR RIGHT TO FORMALLY CONTEST ANY OF THE ALLEGATIONS SET FORTH IN THE COMPLAINT.

IF YOU FAIL TO FILE A WRITTEN ANSWER OR PAY THE PROPOSED PENALTY WITHIN THE 30 CALENDAR DAY TIME LIMIT, A DEFAULT JUDGMENT MAY BE ENTERED PURSUANT TO 40 C.F.R. § 22.17. THIS JUDGMENT MAY IMPOSE THE PENALTY PROPOSED IN THE COMPLAINT.

SETTLEMENT CONFERENCE

29. The EPA encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations and is willing to explore this possibility in an informal settlement conference. If you (or your attorney if you

choose to be represented by one) have any questions or wish to have an informal settlement conference with EPA, please call Amy Swanson at (303) 312-6906. Please note that a request for, scheduling of, or participation in a settlement conference does not extend the period for filing an answer and request for hearing as set out above. The settlement process, however, may be pursued simultaneously with the administrative litigation procedures found in the Consolidated Rules. If a settlement can be reached, its terms must be expressed in a written consent agreement, signed by the parties and incorporated into a final order signed by the Regional Judicial Officer.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8**
Complainant.

Date: 5/26/04 By: **SIGNED**
Elisabeth Evans, Director
Technical Enforcement Program

Date: 6/1/04 By: **SIGNED**
David J. Janik, Supervisory Enforcement Attorney
Legal Enforcement Program

Date: 6.1.04 **SIGNED**
Amy Swanson, Enforcement Attorney
U.S. EPA, Region 8
999 18th Street, Suite 300 (8ENF-L)
Denver, CO 80202-2466
Colorado Atty. Reg. No. 26488
Telephone: 303/312-6906
Facsimile: 303/312-6953

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING was hand-carried to the Regional Hearing Clerk, EPA Region 8, 999 18th Street, Suite 300, Denver, Colorado, and that a true copy of the same was sent via certified mail to:

David Galt, Director
Montana Department of Transportation
P.O. Box 201001
Helena, MT 59680-1001

6/2/04

Date

SIGNED

Judith McTernan

IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE REGIONAL HEARING CLERK.

THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON JUNE 2, 2004.